

KEPPEL OPP'N EXH. 60



Deposition of:
Robert Blair Thomas

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In the Matter of:
EIG v. Petrobras

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1 Later in the process, to the extent that 11:24:16
2 there are issues that are raised, those would be 11:24:19
3 brought to my attention. 11:24:23

4 Q. Okay. And is there criteria that should 11:24:25
5 be -- that is applied at EIG as to when issues 11:24:28
6 should be brought to your attention with respect to 11:24:32
7 risks of unlawful conduct or corruption as relates 11:24:35
8 to a potential investment? 11:24:40

9 A. The expectation is that if -- if it's 11:24:45
10 determined to be relevant and material it should be 11:24:48
11 brought to my attention. So under our investment 11:24:52
12 process the -- the investment professionals or 11:24:57
13 operating professionals in the firm that -- that 11:25:05
14 lead those business units are the ones who make the 11:25:07
15 determination whether it's worthy of elevation. 11:25:10

16 Q. And was that also true in 2011? 11:25:14

17 A. Correct. 11:25:18

18 Q. Okay. And so if the investment 11:25:19
19 professionals decide it's not relevant and 11:25:21
20 material, it doesn't -- you are not made aware of 11:25:24
21 it? 11:25:26

22 A. That's correct. 11:25:28

1 Q. Okay. So you don't actually get to make 11:25:31
2 the decision as to whether you think it's relevant 11:25:32
3 and material if they don't bring it to your 11:25:36
4 attention? 11:25:38

5 A. Correct. I get to make the determination 11:25:39
6 about whether I trust people that are making those 11:25:41
7 determinations. 11:25:45

8 Q. Okay. 11:25:45

9 When you met with Mr. Ferraz in 11:25:48
10 Rio de Janeiro in 2011 did you ask him whether 11:25:50
11 there was any illegal conduct associated with Sete 11:25:54
12 Brazil? 11:25:56

13 A. I did not. 11:25:59

14 Q. Did you ask him whether there was any 11:25:59
15 illegal conduct associated with Petrobras? 11:26:01

16 A. I did not. 11:26:04

17 Q. Okay. Did anyone from the EIG team that 11:26:06
18 met with Mr. Ferraz who was with you ask those 11:26:08
19 questions? 11:26:12

20 A. I don't know. 11:26:14

21 Q. Well, I'm asking about the meetings you 11:26:15
22 were in. 11:26:17

1 A. Oh, that were with me? 11:26:17

2 Q. Yeah. 11:26:19

3 A. I don't recall that they did. I think -- 11:26:19

4 yeah, I don't recall if they did or didn't. 11:26:25

5 Q. Okay. Why didn't you ask Mr. Ferraz 11:26:27

6 whether there was any illegal conduct or corruption 11:26:29

7 associated with Sete Brasil? 11:26:32

8 A. For I guess a couple of reasons. One 11:26:40

9 is -- first is if there's somebody that I have 11:26:43

10 reason to believe engages in that activity, I'm not 11:26:49

11 in that meeting. So I would not have taken the 11:26:53

12 meeting if I had reason to believe that that was 11:26:56

13 the case. 11:26:59

14 Second, I never viewed Ferraz or Sete as 11:27:01

15 particularly relevant. In my eyes this transaction 11:27:07

16 was all about Petrobras, that Sete is just -- was 11:27:14

17 just an alter ego of Petrobras, that -- and that 11:27:18

18 every aspect of this transaction was controlled by 11:27:27

19 and dependent upon Petrobras. 11:27:32

20 To be honest, I thought that was very 11:27:35

21 attractive. I thought that's what made this 11:27:37

22 interesting was that this was Petrobras. Sete was 11:27:39

1 nothing, right. I mean, it didn't exist. No one 11:27:45
2 would give capital to Sete. Sete was just a 11:27:48
3 conduit. 11:27:52

4 The crux of the transaction was Petrobras 11:27:54
5 and I had -- not only did I not think that they 11:27:58
6 were engaged in fraudulent activity, I had every 11:28:02
7 reason to believe that they were not. The fact 11:28:05
8 that it's a national oil company publicly traded on 11:28:09
9 the New York Stock Exchange, one of the largest 11:28:15
10 companies in my industry and, to be honest with 11:28:18
11 you, a company at the time generally held in high 11:28:21
12 regard, Petrobras was very respected in the 11:28:25
13 industry, particularly as it related to deep water 11:28:30
14 activity. 11:28:34

15 And so I think it would be highly 11:28:37
16 offensive for me to walk into a meeting with 11:28:39
17 Petrobras, a senior leadership person at Petrobras, 11:28:42
18 and ask them are you engaging in fraud. I don't 11:28:47
19 think that's appropriate. 11:28:52

20 Q. Okay. Okay. 11:28:55

21 Are you familiar with someone named Pedro 11:29:04
22 Barusco? 11:29:06

1 A. I'm familiar with the name. 11:29:08

2 Q. Okay. Have you ever met him? 11:29:09

3 A. I believe I met him one time. 11:29:12

4 Q. And when -- what were the circumstances 11:29:14

5 under which you met him? 11:29:16

6 A. I recall a meeting at the Sete offices in 11:29:18

7 Rio where I was meeting with Ferraz, and we were 11:29:23

8 standing in the lobby and a group of gentlemen came 11:29:32

9 out of one of the meeting rooms and Ferraz stopped 11:29:38

10 him and introduced him to me and it was Barusco. 11:29:44

11 Q. Okay. That's the only time you've ever 11:29:49

12 interacted with Pedro Barusco? 11:29:50

13 A. Yes, it is. 11:29:52

14 Q. Okay. And did you know what his role was 11:29:53

15 at the time you met him? 11:29:56

16 A. I believe he was chief operating officer 11:29:58

17 of the company. 11:30:01

18 Q. You mentioned that you were meeting with 11:30:03

19 Ferraz in Sete's offices in Rio. What year was 11:30:04

20 that in? 11:30:08

21 A. This probably would have been late 2011 or 11:30:18

22 first half of 2012. 11:30:21

1 of the contractual framework and the -- you know, 11:39:12
 2 my view of the transaction is that it was 11:39:18
 3 effectively a securitization of Petrobras charter 11:39:23
 4 payments, that the underlying rationale for the 11:39:29
 5 transaction in my view was to allow Petrobras to 11:39:34
 6 secure the drill ships and rigs that it needed in 11:39:41
 7 order to execute its business plan around the 11:39:47
 8 presalt and to do it in an off-balance sheet 11:39:52
 9 structured format. 11:39:59

10 So this structure was devised to basically 11:40:02
 11 set up this conduit where effectively investors 11:40:08
 12 would be looking to the strength of the underlying 11:40:13
 13 contracts with Petrobras to support the investment. 11:40:17

14 Q. Any other factors that EIG considered in 11:40:24
 15 making its investment in Sete? 11:40:27

16 A. Sure. I mean, we -- another important 11:40:29
 17 factor was the underlying -- again, the underlying 11:40:36
 18 asset quality that supported the investment. 11:40:43
 19 Again, the whole context of the investment was that 11:40:46
 20 Brazil was fortunate to have made the largest 11:40:55
 21 discovery of oil anywhere in the world in the last 11:40:58
 22 50 years, and so it was the biggest play in our 11:41:00

1 industry. 11:41:06

2 And so taking a view on the -- you know, 11:41:10

3 the quality of those reserves and what the 11:41:15

4 implication -- what that meant for Brazil and for 11:41:19

5 Petrobras were a critical piece of our decision not 11:41:22

6 only on this investment, but our other Brazil 11:41:25

7 investments. It is the dominant theme of the 11:41:31

8 energy industry in Brazil is the development of the 11:41:34

9 presalt. 11:41:36

10 So I mean, that was -- that was the 11:41:40

11 overarching framework for why we found the sector 11:41:42

12 attractive, and then it came down to the 11:41:48

13 particulars of each individual opportunity and 11:41:50

14 whether or not it had the -- you know, the right 11:41:51

15 structure and contractual framework to support an 11:41:54

16 investment. 11:41:58

17 Q. And what factors -- are there any other 11:42:01

18 factors EIG considered in making its investment in 11:42:04

19 Sete? 11:42:06

20 A. Sure. Again, there -- it's -- in any 11:42:09

21 investment decision there are dozens and dozens of 11:42:14

22 factors that we consider. Again, in terms of the 11:42:17

1 primary ones, as I said, it was the underlying 11:42:22
2 importance of the asset and the quality of the 11:42:26
3 asset that was being developed, it was the 11:42:28
4 contractual framework and the credit quality of the 11:42:33
5 counterparty, it was -- and then it was -- among 11:42:38
6 other factors, it was the support of, you know, 11:42:43
7 most, if not all, of the key institutions in the 11:42:49
8 host country. 11:42:55

9 Q. Is there an EIG document that would 11:42:58
10 indicate the factors EIG considered in making its 11:43:01
11 investment in Sete? 11:43:04

12 A. Well, there's several things. Ultimately 11:43:11
13 the analysis that gets -- you know, a typical 11:43:16
14 investment for us takes between six and nine months 11:43:20
15 from start to finish, and so these are long, 11:43:26
16 painful processes with lots of steps and most 11:43:31
17 investment opportunities don't make it through it. 11:43:36
18 So most, you know, fail at some point in the 11:43:39
19 process. So as it goes along we're continually 11:43:43
20 assessing it. 11:43:49

21 Ultimately it gets turned into a single 11:43:50
22 document which is what's known as an investment 11:43:52

1 recommendation, but an investment recommendation is 11:43:54
2 really just a summary of what has typically been 11:43:58
3 months of work getting to that point and numerous 11:44:05
4 conversations along the way. It's not that it just 11:44:07
5 gets sprung on us that, you know, here's a 11:44:10
6 decision. 11:44:12

7 So -- and then ultimately the decision 11:44:19
8 rests with the seniormost people in the firm who 11:44:20
9 comprise the investment committee, who each of us 11:44:24
10 have decades of experience. So we apply the 11:44:28
11 judgment that each of us have individually having 11:44:31
12 seen dozens if not hundreds of similar 11:44:34
13 opportunities around the world. 11:44:37

14 Q. Does the investment recommendation 11:44:39
15 summarize or reflect the factors EIG considered in 11:44:41
16 making its investment in Sete? 11:44:45

17 A. Several of them, but it's not meant to be 11:44:50
18 encyclopedic. So... 11:44:54

19 Q. Are there other documents that I could 11:44:57
20 look at that would tell me what other factors EIG 11:44:59
21 considered in making its investment in Sete? 11:45:02

22 A. I mean, the other documents would be the 11:45:12

1 due -- you know, the diligence documents that are 11:45:14
2 prepared along the way. Ultimately those roll up 11:45:17
3 and presumably get summarized in the investment 11:45:21
4 recommendation, but, you know, it's not a 11:45:24
5 mechanical process. As I said, at the end of the 11:45:25
6 process, the ultimate decision rests with, you 11:45:28
7 know, the four or five most people -- senior people 11:45:31
8 in the firm who exercise business judgment, and 11:45:34
9 each of us brings something different to that 11:45:37
10 discussion. 11:45:40

11 Q. Is the decision to invest in Sete made by 11:45:41
12 the investment committee for each of the funds that 11:45:45
13 made investments? 11:45:48

14 A. That's correct. 11:45:49

15 Q. Okay. Who did the analysis of the 11:45:50
16 investment in Sete? 11:45:54

17 A. With Sete, as with all transactions, 11:45:58
18 there's a deal team that's assembled when an 11:46:01
19 opportunity comes in, and then typically, again, as 11:46:06
20 months go by if the opportunity continues to be of 11:46:10
21 interest, you know, people are added to it along 11:46:15
22 the way and ultimately at the end, you know, it can 11:46:18

1 be, you know, six, eight, ten people on the team, 11:46:23

2 but it builds over time. 11:46:27

3 Q. Who was on the team that analyzed the 11:46:32

4 potential investment in Sete Brasil for EIG? 11:46:35

5 A. The people that come to mind in terms of 11:46:37

6 the actual deal team would be Kevin Corrigan, Kevin 11:46:40

7 Lowder, Simon Hayden, Hoshnav Patel. I'm not sure 11:46:48

8 of what other junior people would have been 11:47:14

9 involved. And then there's kind of a quality 11:47:15

10 control process that we go through where prior to 11:47:27

11 something coming to investment committee there'd be 11:47:30

12 a discussion among a subset of the investment 11:47:33

13 professionals, and I don't know who was part of 11:47:40

14 that in this particular transaction. 11:47:43

15 Q. Did Mr. Talbot have any part in evaluating 11:47:45

16 the Sete Brasil investment for EIG? 11:47:49

17 A. Yes. 11:47:53

18 Q. What was his role in evaluating the Sete 11:47:54

19 Brasil investment? 11:47:56

20 A. So Kurt was one of the members of the 11:47:58

21 investment committee, and in addition to that he 11:48:02

22 had a role which was kind of a coordinating role 11:48:08

1 where he managed resource allocation. So deciding 11:48:12
2 when and where to allocate deal people to specific 11:48:20
3 teams, he had that responsibility. 11:48:23

4 So the deal lead would come to him and say 11:48:29
5 I need some help, I need some people, who can you 11:48:31
6 give me, and, you know, Kurt would negotiate among, 11:48:34
7 you know, the other managing directors in the firm 11:48:39
8 as to who was available and to make sure that each 11:48:41
9 deal team had what they needed. And then when 11:48:45
10 there were internal review discussions, he would 11:48:48
11 often coordinate those internal reviews. 11:48:51

12 Q. But I'm interested specifically in his 11:48:57
13 role with respect to analyzing the Sete Brasil 11:48:59
14 investment. What role, if any, did he play in 11:49:02
15 that? 11:49:05

16 A. He played the same role he played in every 11:49:07
17 other investment. So there was nothing unique 11:49:09
18 about Sete in terms of his involvement. 11:49:12

19 Q. Okay. When the investment committee 11:49:15
20 considers whether to make an investment, what 11:49:22
21 information does it have -- what information -- 11:49:26
22 actually, I'll come back to that. 11:49:30

1 form before it became final? 13:14:40

2 A. Unlikely. I don't recall. 13:14:44

3 Q. Okay. Who is the investment committee for 13:14:46

4 Energy Fund XIV? 13:14:50

5 A. Well, myself, I'm the chair of the 13:14:57

6 investment committee. It would have included Randy 13:15:01

7 Wade, Kurt Talbot, Jean-Daniel Borgeaud, and I 13:15:04

8 don't believe we had a fifth member. Normally we 13:15:21

9 had five, but I believe we had four. 13:15:23

10 Q. And are the people you just identified the 13:15:25

11 people that were the investment committee for 13:15:27

12 Fund XIV at the time the Sete Brasil transaction 13:15:32

13 was considered? 13:15:35

14 A. I believe so. 13:15:36

15 Q. Okay. What would you do with this 13:15:38

16 investment -- what did you do with this investment 13:15:42

17 recommendation when you received it? 13:15:44

18 A. We would schedule an investment committee 13:15:47

19 meeting, this would get distributed firm wide, so 13:15:51

20 all the investment professionals in the firm would 13:15:56

21 receive this document, and they'd have an 13:15:59

22 opportunity to ask questions of the deal team. 13:16:04

1 Then we would have a meeting. It would 13:16:10
2 typically -- when something gets to the investment 13:16:14
3 recommendation stage, again, we would have 13:16:16
4 discussed this at committee probably five or six 13:16:19
5 times already in various stages, but at this stage 13:16:21
6 we would have a pretty fulsome conversation, 13:16:26
7 typically they'd last, you know, one to two hours 13:16:31
8 on a single investment, and the investment 13:16:34
9 committee but also really any other investment 13:16:41
10 professional in the firm who wanted to ask 13:16:43
11 questions or state an opinion would have an 13:16:45
12 opportunity to do so. 13:16:49

13 Q. Okay. My question was what -- what did 13:16:51
14 you personally do when you -- with this document 13:16:54
15 when you received it? 13:16:56

16 A. I read it. 13:16:57

17 Q. Okay. Did you ask any questions of 13:16:59
18 anyone? 13:17:02

19 A. Well, yes. 13:17:02

20 Q. Who did you -- who did you ask questions 13:17:04
21 of? 13:17:07

22 A. I asked the deal team numerous questions 13:17:08

1 in the context of the investment committee meeting 13:17:13

2 that I chaired. 13:17:16

3 Q. Okay. So at the investment committee 13:17:17

4 meeting you would have asked the deal team 13:17:20

5 questions? 13:17:22

6 A. Correct. 13:17:24

7 Q. Are there other documents the investment 13:17:24

8 committee would have reviewed in order to make its 13:17:27

9 decision about this investment, the Sete Brasil 13:17:31

10 investment, besides Exhibit 8? 13:17:35

11 A. Yes. So, again, this is the culmination 13:17:38

12 of a nine-month process where there had been 13:17:43

13 numerous discussions and update memos along the 13:17:46

14 way. So everybody on the committee was well versed 13:17:49

15 in the opportunity, and so we would have been kept 13:17:53

16 up along the way. 13:17:58

17 Now, typically -- and I don't recall on 13:18:00

18 this investment -- there would be third-party 13:18:02

19 advisor reports and things like that. I would 13:18:04

20 not -- I would not typically read those or look at 13:18:07

21 those. To the extent that there was anything 13:18:11

22 relevant in those, I would expect the deal team to 13:18:15

1 summarize- -- excuse me -- summarize that in the 13:18:17
2 investment recommendation. 13:18:19

3 Q. What are third-party advisor reports that 13:18:21
4 you just referred to? 13:18:24

5 A. We will often engage -- well, we always 13:18:25
6 engage third parties on every investment that we 13:18:29
7 make. 13:18:34

8 Q. So what third party did you engage with 13:18:34
9 respect to this investment, Sete Brasil? 13:18:36

10 A. Well, I know we had U.S. legal counsel, I 13:18:41
11 know we had Brazil legal counsel. I think -- I 13:18:45
12 believe we had market reports on the presalt. They 13:18:55
13 might have been -- I don't know if those were Wood 13:19:00
14 McKenzie reports or whether -- Wood McKenzie is a 13:19:04
15 widely used source in our industry for subsurface 13:19:10
16 analysis, but technical reports, independent 13:19:14
17 engineers, market consultants, those -- those types 13:19:20
18 of folks. 13:19:24

19 Q. So -- but I'm -- I'm interested in what 13:19:25
20 third parties you used for this specific investment 13:19:28
21 evaluation. Other than Brazilian counsel and U.S. 13:19:32
22 counsel, can you identify any specific third 13:19:37

1 parties that provided input to EIG with respect to 13:19:39

2 the Sete Brasil investment? 13:19:43

3 A. Not that I'm aware of. I wouldn't be 13:19:44

4 involved with them. 13:19:46

5 (Thomas Exhibit 9 was marked 13:19:48

6 for identification.) 13:19:48

7 BY MR. WOLINSKY: 13:19:48

8 Q. Okay. Let me show you another document. 13:19:48

9 Here comes Exhibit 9. 13:20:38

10 A. I have it. 13:20:47

11 Q. Okay. This is the minutes of TCW Energy 13:20:48

12 Fund XIV EIG Investment Committee meeting on 13:20:53

13 June 27th, 2011. Have you seen this document 13:20:56

14 before? 13:20:58

15 A. No. 13:21:01

16 Q. Okay. 13:21:01

17 A. I don't recall seeing it. I probably did 13:21:02

18 at the time. 13:21:07

19 Q. All right. And so do you recognize this 13:21:07

20 as a meeting minute that indicates the approval of 13:21:11

21 Fund XIV's investment in Sete Brasil? 13:21:17

22 A. Yes. 13:21:24

1 Q. Okay. It indicates that the Fund XIV 13:21:24
2 investment committee is three people, you, Jeffrey 13:21:27
3 Anderson and Alvin Albe. 13:21:30

4 A. Yeah. 13:21:34

5 Q. Okay. Is that accurate? 13:21:35

6 A. Yeah, I misspoke. What I described for 13:21:35
7 you was the Fund XV committee. This is the 13:21:37
8 transition fund from TCW, and so this is still 13:21:41
9 under the TCW committee structure. 13:21:43

10 Q. Okay. So who is Mr. Albe? 13:21:49

11 A. He was a senior officer at TCW. 13:21:51

12 Q. And who is Mr. Anderson? 13:21:53

13 A. He was a mid-level officer at TCW. 13:21:55

14 Q. Okay. Did either of them have any 13:21:59
15 involvement in evaluating the Sete Brasil 13:22:02
16 investment for EIG? 13:22:04

17 A. Yes. They would have been part of the -- 13:22:07
18 the final discussion. 13:22:11

19 Q. Okay. Would they have had any involvement 13:22:15
20 prior to this final discussion on June 27th, 2011? 13:22:17

21 A. To the extent that we -- they participated 13:22:22
22 in committee meetings and those were held weekly. 13:22:23

1 not complying with its capital contribution 13:29:43

2 obligations to Sete Brasil? 13:29:46

3 A. Yes. 13:29:51

4 Q. Okay. Did -- when was that? 13:29:51

5 A. When the company was in judicial recovery. 13:29:54

6 Q. Okay. So prior to the company going into 13:29:57

7 judicial recovery, did EIG ever consider not 13:30:01

8 complying with its capital contribution 13:30:05

9 obligations? 13:30:07

10 A. I don't believe so. 13:30:09

11 Q. Okay. When you said that the -- the 13:30:10

12 decisions other than material changes are delegated 13:30:14

13 to you, would you have authority to decide not to 13:30:17

14 fund a capital call that EIG had committed to 13:30:22

15 funding? 13:30:30

16 A. Yes. 13:30:32

17 Q. Okay. You would not need investment 13:30:32

18 committee permission to do that? 13:30:33

19 A. Correct. 13:30:35

20 Q. Okay. Is there ever a time Sete Brasil 13:30:35

21 made a capital call that EIG decided -- did not 13:30:37

22 comply with? 13:30:42

1 A. Not to my knowledge. 13:30:45

2 Q. Okay. Is there ever a time up to and 13:30:46

3 including January 2015 that you considered not 13:30:53

4 complying with the capital call made by Sete 13:30:58

5 Brasil, you being EIG? 13:31:02

6 A. I don't believe so. 13:31:08

7 Q. Okay. And is that because EIG was 13:31:09

8 committed to contributing the capital that it had 13:31:13

9 agreed to contribute to Sete Brasil? 13:31:17

10 A. Yes. We had a contractual commitment. 13:31:21

11 Q. Okay. And EIG -- did EIG ever consider 13:31:23

12 whether or not it had any basis to -- to withdraw 13:31:28

13 from that contractual obligation? 13:31:34

14 A. I don't believe so. 13:31:39

15 Q. Did EIG ever consider whether it had a 13:31:40

16 contractual basis to argue that it -- it no longer 13:31:42

17 had that contractual obligation? That was a 13:31:47

18 terrible question. Let me ask a different one. 13:31:51

19 Did EIG ever consider whether it had a 13:31:54

20 contractual basis to be excused from making capital 13:31:57

21 contributions it previously had committed to make? 13:32:03

22 A. Only in 2016 is my recollection. 13:32:08

1 Q. And so when did EIG make its contractual 13:32:12
2 obligation to commit 500 million Reais of capital 13:32:16
3 to Sete Brasil? 13:32:24

4 A. Well, it happened in stages, but I believe 13:32:27
5 the initial commitment was middle of 2011. 13:32:33

6 Q. Okay. And as of 2 -- as of middle of 2011 13:32:38
7 was EIG committed to providing capital to Sete 13:32:42
8 Brasil? 13:32:50

9 A. I believe we were. I think there were a 13:32:57
10 number of conditions precedent that were incumbent 13:32:59
11 upon the company, but subject to satisfaction of 13:33:07
12 those conditions precedent, then yes. 13:33:10

13 Q. And to your knowledge, were those 13:33:13
14 conditions satisfied? 13:33:14

15 A. Subsequently, yes. 13:33:17

16 Q. Okay. Let me go back to Exhibit 8, which 13:33:20
17 is the investment recommendation, and ask you a few 13:33:22
18 more questions about that. Tell me when you have 13:33:27
19 that in front of you. 13:33:29

20 A. Okay. 13:33:34

21 Q. Okay. So if you look at page 22 of the 13:33:35
22 investment recommendation, that's the page that 13:33:42

1 starts with "Base Case Assumptions" at the top. 13:33:45

2 A. I have it. 13:33:58

3 Q. Okay. Is this a page you would have 13:33:58

4 looked at as part of deciding whether to vote in 13:34:03

5 favor of the investment in Sete Brasil? 13:34:05

6 A. Yes, it is. 13:34:10

7 Q. Okay. The third line says "BRL to USD 13:34:12

8 exchange rate"; do you see that? 13:34:17

9 A. I do. 13:34:21

10 Q. Do you have an understanding of how that 13:34:22

11 is relevant to the base case model? 13:34:24

12 A. I do. 13:34:29

13 Q. What is your understanding? 13:34:31

14 A. As I said earlier, a portion of the 13:34:35

15 expenses of the company were denominated in -- in 13:34:37

16 local currency, and so accounting for inflation or 13:34:41

17 deflation as it relates to those obligations 13:34:50

18 would -- you'd want to account for those in the 13:34:56

19 financial analysis. 13:34:59

20 Q. And do you have an understanding of how it 13:35:00

21 would impact EIG's investment if this assumption 13:35:03

22 was incorrect? 13:35:06

1 A. I do. I do. 13:35:09

2 Q. What's your understanding? 13:35:11

3 A. Well, this really gets back to, again, the 13:35:12
4 whole structure of the transaction. What we liked 13:35:17
5 about this transaction is that the impact, while 13:35:21
6 not immune to currency fluctuation, the impact here 13:35:26
7 was muted because of the contractual structure, and 13:35:32
8 so the contractual framework had several 13:35:36
9 protections built in to account for FX risk. And 13:35:41
10 so -- and so while this is relevant in this and any 13:35:48
11 other investment we make outside the United States, 13:35:54
12 I didn't view this as, you know, one of the most 13:35:59
13 significant risks in this transaction because of 13:36:04
14 the contractual framework. 13:36:06

15 Q. The capital calls that Sete Brasil made 13:36:07
16 were in -- in Brazilian currency, Reais, correct? 13:36:10

17 A. I believe so. 13:36:16

18 Q. Okay. So if the -- if the Reais was 13:36:17
19 devalued relative to the dollar, the number of 13:36:22
20 dollars that EIG would need to meet that capital 13:36:26
21 call would be lower than if the currency ratio had 13:36:29
22 remained stable; is that right? 13:36:35

1 would actually come through? 15:30:23

2 A. I don't think -- I don't think that was 15:30:26
3 the case in April of 2014. 15:30:28

4 Q. Well, 1.3 billion of it was already off 15:30:33
5 the table is what Mr. Corrigan was telling you, 15:30:35
6 right? 15:30:38

7 A. Yes, but the convertible debenture was a 15:30:40
8 Band-Aid. That wasn't the core part of the 15:30:44
9 financing plan. 15:30:47

10 Q. \$1.3 billion was a -- sorry -- Reais was a 15:30:48
11 Band-Aid? 15:30:55

12 A. Yes. 15:30:56

13 Q. What was it covering up? 15:30:56

14 A. Again, the -- 15:30:59

15 Q. To use your analogy? 15:31:01

16 A. Fair enough. Fair enough. I'll give you 15:31:02
17 that one. 15:31:05

18 Q. Sorry. In seriousness, what -- what was 15:31:05
19 the Band-Aid of 1.3 billion Reais to -- to address? 15:31:08

20 A. The lack of the long-term funding having 15:31:12
21 funded yet. And so the total financing plan of the 15:31:17
22 company was \$24 billion U.S. Of that approximately 15:31:20

1 4 billion was designed to be shareholder's equity 15:31:32
2 and subordinated capital and about 20 billion U.S. 15:31:35
3 was designed to be debt financing, the biggest 15:31:43
4 piece of which was BNDS. 15:31:47

5 Q. And -- and do you remember how much the 15:31:49
6 BNDS piece was? 15:31:51

7 A. I believe -- my recollection is it was 15:31:57
8 just over half of the total debt. 15:32:00

9 Q. So 10 billion? 15:32:04

10 A. Something in that neighborhood. 15:32:07

11 Q. Okay. 15:32:09

12 Did it concern you at all in April of 2014 15:32:12
13 that the BNDS debenture was off the table? 15:32:16

14 A. As I said, not particularly. What 15:32:22
15 concerned me was that the BNDS long-term financing 15:32:24
16 was not in place. If the debenture didn't happen, 15:32:27
17 which it didn't, it was just replaced with another 15:32:32
18 bridge loan. 15:32:35

19 Q. So -- but as of April 2014 you were 15:32:36
20 concerned that the long-term financing from BNDS 15:32:38
21 hadn't been finalized? 15:32:41

22 A. Correct. 15:32:44

1 Q. Okay. 15:32:44

2 You then respond to Mr. Corrigan and say 15:32:45

3 "Let's discuss tomorrow. It's appropriate to 15:32:47

4 register our displeasure, but we need to keep sight 15:32:49

5 of the fact that our only client is Petrobras"; do 15:32:52

6 you see that? 15:32:55

7 A. I do. 15:32:56

8 Q. What did you mean by "our only client is 15:32:57

9 Petrobras"? 15:33:01

10 A. As I said earlier, my perception of this 15:33:02

11 transaction was that all roads in this 15:33:05

12 transaction -- everything revolved around 15:33:15

13 Petrobras, that Sete was just a financing conduit, 15:33:18

14 an off-balance sheet structure to enable Petrobras 15:33:22

15 to get access to these rigs without putting 15:33:27

16 \$20 billion of debt on their balance sheet. And 15:33:29

17 so, again, in my terms Sete was just a 15:33:32

18 securitization vehicle, that's all it was. It 15:33:37

19 wasn't a real company and that what mattered is 15:33:40

20 what Petrobras thought. 15:33:44

21 (Thomas Exhibit 20 was marked 15:33:49

22 for identification.) 15:33:49

1 BY MR. WOLINSKY: 15:33:50

2 Q. Okay. Let me show you the next document. 15:33:50

3 Actually before I do -- well, let me show you the 15:33:58

4 next one. Okay. This is going to be marked 20. 15:34:01

5 A. Okay. I have it. 15:34:48

6 Q. Okay. Good. I'm glad you do because 15:34:49

7 mine's still a spinning circle. I have a paper 15:34:52

8 copy. 15:34:55

9 So you can see here that the -- on the 15:34:56

10 first page -- there's only one page actually -- the 15:34:57

11 middle e-mail is from Kevin Corrigan to you and 15:35:02

12 Ronnie Hawkins saying "Please find attached a 15:35:09

13 fairly aggressive letter which Luce (Aldo Floris 15:35:12

14 and Lauro de Luca) have sent to the FIP 15:35:12

15 administrator with a request to send to Petrobras"; 15:35:18

16 do you see that? 15:35:20

17 A. I do. 15:35:21

18 Q. Okay. And you respond that same day and 15:35:21

19 say "No way we should take a hostile approach 15:35:23

20 towards Petrobras. You've already sent one letter 15:35:27

21 to Petrobras (via FIP) registering our displeasure 15:35:29

22 on this matter. So there's no need for us to do 15:35:32

1 anything further. Aldo should understand that we 15:35:35
2 have other Petrobras-related investments as well to 15:35:37
3 consider"; do you see that? 15:35:39

4 A. I do. 15:35:40

5 Q. And why were you telling Mr. Corrigan that 15:35:41
6 no way should we take a hostile approach towards 15:35:43
7 Petrobras? 15:35:47

8 A. Again, Petrobras is the key to the whole 15:35:54
9 transaction and we can't be -- we should do 15:35:56
10 everything we can to avoid being in an adverse 15:36:02
11 situation with our only client in this transaction, 15:36:05
12 and that on top of that we have other investments 15:36:10
13 in Brazil where we're partnered with Petrobras and 15:36:15
14 I was concerned that us taking, you know, a 15:36:20
15 belligerent approach would -- would sour our 15:36:28
16 relationship in other regards. 15:36:34

17 Q. And the other investment with Petrobras is 15:36:35
18 the Bolivia to Brazil pipeline? 15:36:39

19 A. Yes. And at this point we also owned 15:36:43
20 Prumo Logistica. 15:36:46

21 Q. And what is Petrobras's relationship to 15:36:47
22 Prumo Logistica? 15:36:50

1 gas pipe -- natural gas distribution network. It 15:45:01
2 was a competitive process. We partnered with a 15:45:06
3 number of sovereign wealth funds and we -- these 15:45:10
4 are public bids. And so they literally opened the 15:45:17
5 envelope and you see who wins, and we lost by less 15:45:23
6 than 1/10th of 1 percent to Engie, the French 15:45:26
7 utility. 15:45:32

8 Q. Okay. So Petrobras was divesting and you 15:45:34
9 put in a bid to purchase what they were divesting? 15:45:38

10 A. Correct. 15:45:42

11 (Thomas Exhibit 22 was marked 15:45:50
12 for identification.) 15:45:50

13 BY MR. WOLINSKY: 15:45:50

14 Q. Got it. Okay. Let me show you the next 15:45:50
15 document. This is going to be Exhibit 22. Tell me 15:45:52
16 when you have it. Do you have it? 15:46:17

17 A. I do. 15:46:32

18 Q. Okay. If you look at the third page of 15:46:32
19 the document, it's an e-mail from Kevin Corrigan to 15:46:34
20 you. It's labeled "FIP Sondas/mail of Sete Brasil 15:46:41
21 001-2014 - Discussion about the third issuance 15:46:44
22 (simulations)"; do you see that? 15:46:51

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1	A. I do.	15:46:53
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2	Q. It says "You'll recall that there's been	15:46:54
3	quite a bit of discussion over the past six months	15:46:57
4	over the need for additional capital in Sete.	15:46:59
5	Initially the company was suggesting nearly	15:47:01
6	2 billion Reais (which is the correct amount to	15:47:03
7	account for the devaluation of the Real over the	15:47:06
8	past 18 months and to bring the debt/equity ratio	15:47:09
9	in line with the 75 percent/25 percent the long-	15:47:13
10	term lenders have been demanding, BNDES, GIEK in	15:47:17
11	particular). As there was very little support	15:47:19
12	among current shareholders for this path, there's	15:47:21
13	going to be a Band-Aid approach applied now to	15:47:23
14	adhere to BNDES's lending conditions for the first	15:47:26
15	batch of nine drill ships. This is not the batch	15:47:29
16	of seven that was first awarded, but the way BNDES	15:47:32
17	is going about its approvals for long-term	15:47:35
18	financing. So far only the first batch has been	15:47:37
19	formally approved." And then he lays out some	15:47:41
20	questions about EIG's further investment; do you	15:47:45
21	see that?	15:47:47

22	A. I do.	15:47:48
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1 Q. Okay. So first of all, I -- I want to -- 15:47:52
2 I want to understand what you know about Sete's 15:47:53
3 financial condition as of February 1, 2014. It 15:47:57
4 appears here that EIG was aware that -- that the 15:48:01
5 long-term funders were requiring a certain 15:48:07
6 debt-to-equity ratio that Sete was not meeting, 15:48:10
7 correct? 15:48:13

8 A. Well, I think that -- that debt-to-equity 15:48:16
9 ratio, yes, had been in place for some time and, 15:48:19
10 yes, it was not meeting it. 15:48:23

11 Q. And at least from Mr. Corrigan's e-mail it 15:48:25
12 appears that one -- or the only reason that it 15:48:28
13 wasn't meeting it was because of the devaluation of 15:48:30
14 AI over the past 18 months. Is that your 15:48:33
15 understanding? 15:48:38

16 A. I do not believe that's correct. 15:48:42

17 Q. Okay. What do you think is incorrect 15:48:43
18 about that? 15:48:45

19 A. I think certainly the devaluation was a 15:48:46
20 major factor, but I think the -- the, you know, 15:48:53
21 delays were also a factor. 15:48:58

22 Q. Delays in what? 15:49:00

1 A. The long-term financing. 15:49:03

2 Q. Okay. They were also a factor in the 15:49:04
3 ratio being off? 15:49:06

4 A. No. The quantum -- the ratio's off 15:49:11
5 because the quantum of capital continues to grow. 15:49:14

6 Q. So the ratio was off in favor of capital 15:49:17
7 compared to debt? 15:49:20

8 A. As delays cause an increase in the need 15:49:21
9 for capital and as the denominator increases your 15:49:28
10 ratio gets out of whack. 15:49:34

11 Q. Okay. So it's your understanding that the 15:49:36
12 reason that the debt-to-equity ratio was off was 15:49:37
13 because there was too much capital invested 15:49:41
14 relative to that? 15:49:46

15 A. No. The capital required continued to 15:49:47
16 grow, and so the amount of capital that was 15:49:50
17 available was -- 15:49:57

18 Q. I see. 15:49:58

19 A. -- not sufficient. 15:49:59

20 Q. I see. Okay. 15:50:00

21 A. And yes, the FX was part of that. 15:50:02

22 Q. Okay. And how did the foreign exchange or 15:50:05

1 the devaluation of the AI over the past 18 months 15:50:08

2 impact the debt-to-equity ratio, if you know? 15:50:11

3 A. Presumably it's because they had contracts 15:50:14

4 that were -- that mismatch between their capital, 15:50:22

5 which was a combination of dollars and Reais, and 15:50:27

6 their contracts and the -- the Reais portion of 15:50:29

7 their contracts. 15:50:36

8 Q. And how would the devaluation of the Reais 15:50:38

9 impact the debt-to-equity ratio based on what you 15:50:41

10 just described? 15:50:43

11 A. Certainly a strengthening dollar, which is 15:50:47

12 what was happening, would make -- for local 15:50:50

13 investors would make all of those contracts more 15:50:53

14 expensive. 15:50:58

15 Q. Okay. So as the Reais became devalued the 15:50:59

16 contracts priced in dollars became more expensive? 15:51:02

17 A. Correct. 15:51:06

18 Q. Okay. And how does that impact the 15:51:07

19 debt-to-equity ratio? 15:51:09

20 A. The -- the payments -- the dollar payments 15:51:13

21 under those contracts were larger, and so the -- 15:51:16

22 the total amount of capital necessary to implement 15:51:21

1 the business plan was larger and the debt 15:51:23
2 commitments weren't a percentage, they were a 15:51:31
3 finite number. And so, you know, they had 15:51:33
4 committed 75 percent of X and now the total cost 15:51:36
5 was X plus 10, and so the ratio didn't work. 15:51:39

6 Q. Okay. So if I understand you right, 15:51:46
7 because of the devaluation of the Reais for Sete's 15:51:48
8 purposes it caused there to be a need for 15:51:52
9 additional funds which Sete then had to look to 15:51:55
10 fill that gap? 15:51:59

11 A. That's correct. 15:52:01

12 Q. And that's why Mr. Corrigan is talking 15:52:01
13 about what the investors might do to contribute 15:52:05
14 additional money in order to fill the gap for the 15:52:08
15 additional money that was needed? 15:52:13

16 A. That's correct. 15:52:15

17 Q. Okay. And money was needed because of the 15:52:16
18 devaluation of the Reais over the past 18 months? 15:52:21

19 A. That's correct. 15:52:24

20 Q. Okay. All right. 15:52:25

21 And then on the second page of this 15:52:28
22 document you respond and you say "I'm fine with 15:52:29

1 what you propose, but not with the 18.5 percent 15:52:39

2 premium"; do you see that? 15:52:42

3 A. I do. 15:52:46

4 Q. And then in the last line of this e-mail 15:52:46

5 you say "At some point we're going to need to stop 15:52:48

6 coddling these guys and treat them like a real 15:52:50

7 company"; do you see that? 15:52:53

8 A. I do. 15:53:00

9 Q. Okay. Who are "these guys" in that 15:53:00

10 statement? 15:53:04

11 A. I believe I'm referring to the Sete 15:53:06

12 management team. 15:53:09

13 Q. Okay. And so at that point in time you -- 15:53:12

14 you believed that EIG was coddling the Sete 15:53:16

15 management team; is that right? 15:53:21

16 A. As it related to the capitalization of the 15:53:22

17 company, yes. 15:53:25

18 Q. Okay. And that's because EIG continued 15:53:26

19 to -- well, actually, rather than that, in what way 15:53:29

20 were you coddling them as it related to the 15:53:32

21 capitalization of the company? 15:53:35

22 A. This was all related -- all part of this 15:53:37

1 continuous discussion that had been going on for 15:53:41
2 more than two years at this point about the equity 15:53:45
3 capitalization of the company, who the shareholders 15:53:49
4 were, how the equity was allocated among those 15:53:55
5 shareholders, and the entry price for new capital. 15:53:58
6 And so in my view the company was inexperienced in 15:54:03
7 how these types of transactions normally work and 15:54:16
8 were not handling things the way that a proper 15:54:21
9 company would. 15:54:25

10 Q. Okay. So -- and what would it mean -- at 15:54:26
11 that point in time Sete was not -- you were not 15:54:30
12 treating Sete like a real company. What did you 15:54:33
13 mean by that? 15:54:37

14 A. It's consistent with what I've said 15:54:38
15 before. I -- I never really viewed Sete as a real 15:54:40
16 company. Again, I viewed it as a conduit. It was 15:54:43
17 a securitization vehicle to -- to facilitate the 15:54:47
18 factoring of these -- of these contracts and not 15:54:52
19 much more than that. 15:54:56

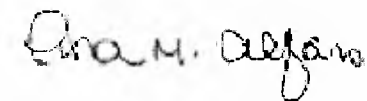
20 Q. And here you were saying that at some 15:54:57
21 point you're going to need to start treating them 15:54:59
22 like a real company; is that right? 15:55:01

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, TINA M. ALFARO, Registered Professional
3 Reporter, Certified Realtime Reporter, and Notary
4 Public, the officer before whom the foregoing
5 deposition was taken, do hereby certify that the
6 foregoing transcript is a true and correct record
7 of the testimony given; that said testimony was
8 taken by me stenographically and thereafter reduced
9 to typewriting under my direction; that reading and
10 signing was requested; and that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to this case and have no interest,
13 financial or otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my notarial seal this 21st day of
16 December, 2020.

17
18 My Commission expires October 31, 2025.

19 

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22 DISTRICT OF COLUMBIA